

Robert De Vries

# Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE BOARD OF APPEALS CASE NO. 070064

Petitioner, Kenney Realty Trust, applied to the Building Department for a permit to construct a basement apartment thereby converting his property at 9 Strathmore Road from a three-family residence to a four-family residence. The application was denied and an appeal taken to this Board.

On December 6, 2007 the Board of Appeals met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed January 8, 2007 at 7:15 p.m., 2<sup>nd</sup> Floor of the Main Library, as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published December 13 and 20, 2007 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE MASSACHUSETTS BOARD OF APPEALS NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: KENNY REALTY TRUST

Location of Premises: 9 STRATHMORE RD BRKL

Date of Hearing: 01/03/2008 Time of Hearing: 07:15 p.m.

Place of Hearing: Main Library, 2<sup>nd</sup> floor

A public hearing will be held for a special permit and/or variance from:

- 1) 5.05; Conversions; Special Permit Required.
- 2) 5.20; Floor Area Ratio; Variance Required.
- 5.22.3. b.2; Exceptions to Maximum Floor Area Ratio Regulations for Residential Units. Special Permit Required.
- 4) 5.50; Front Yard Requirements; Variance Required.
- 5) 5.51; Projections into Front Yards; Variance Required.
- 6) 5.60; Side Yard Requirements; Variance Required.
- 7) 5.90; Minimum Landscaped Open Space; Variance Required.
- 8) 5.91; Minimum Usable Open Space; Variance Required.
- 9) 5.91. e; Minimum Usable Open Space; Variance Required.
- 10) 6. 01.2.a; General Regulations Applying to Required Off-Street Parking Facilities; Special Permit Required.
- 11) 6.02.1; Table of Off-Street Parking Space Requirements; Variance Required.
- 12) For the Design of All Off-Street Parking Facilities

6.04.2. b. Variance Required.

6.04.2. f; Variance Required.

6.04.3; Special Permit Required.

6.04.5 .b; Variance Required.

6.04.12; Special Permit Required.

13) 8.02.2; Alteration or Extension; Special Permit Required.

Of the Zoning By-Law to construct a basement apartment thereby converting from a three family into a four family residence per plans at 9 STRATHMORE RD BRKL.

Said Premise located in a M-1.5 District.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar

at:http://calendars.town.brookline.ma.us/MasterTownCalandar/?FormID=158.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs

known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

## Enid Starr Jesse Geller Robert De Vries

Present at the hearing was Chair, Enid Starr and Board Members Jesse Geller and Anna Christina Wolfe. The owner of the property, Shane Kenney, of 4 Taunton St., Somerville, MA 02143 was present and was represented by Attorney Clifford Freeman of Freeman and Freeman, 7 Harvard St., Brookline, MA 02445.

Attorney Freeman described the site and neighborhood. Number 9 Strathmore Road is one of a group of ten (10) three-storey, multi-family row houses along Strathmore Road in the block bounded by Beacon Street, Strathmore Road and Clinton Path. These properties are separated by a 14 foot passageway from a similar block of row housing along Beacon Street. This common passageway includes a 7 foot strip of the rear yard along the rear lot lines of these lots on either side, and provides vehicular access to rear lot parking for all of the properties on this side of Beacon Street and Strathmore Road. Waldstein Playground is at the east end of this block along Clinton Path and the MBTA's Cleveland Circle /Reservoir Yards are on the west end, directly opposite Strathmore Road at Beacon Street.

Attorney Freeman described the project as the conversion of the property from three to four apartment units by converting the existing unfinished basement into an approximately 1250 s.f. two—bedroom apartment. He said that there is no increase in the exterior dimensions of the structure and the impact on the neighborhood would be minimal. The proposal includes the reconfiguration of an existing front stairwell to create a new entrance to the basement unit, installing new windows and window wells on the existing basement level, and the moving of furnaces and hot water heaters for the building into a new mechanical room. The property currently contains two (2), three-bedroom units and one (1) two-

bedroom unit. In order to increase usable open space on the property, a 748 s.f. wood deck will be constructed on the roof, accessed by an existing head house. The petitioner is also proposing to install additional landscaping at the rear of the house, between the parking area and the building. The existing parking area at the rear of the building provides parking for four vehicles, with access by means of a passageway between Clinton Road and Strathmore Road. Attorney Freeman recounted many similar conversions in the neighborhood approved by the Board in the past. He also reminded the Board that this structure was previously approved for a three-bedroom conversion in the basement in 2002 but the relief was not acted-upon and subsequently lapsed. Attorney Freeman said that Mr. Kenney intended to move into the building after the conversion and opined that this could provide some assurance to the neighborhood that the residents of 9 Strathmore Road would be good neighbors. He said that the construction of the roof deck was a counter-balancing amenity as well as the construction of trash barrel holders, a well delineated sidewalk path along the western side of the parking area and additional landscaping at the rear of the structure.

Attorney Freeman stated that he thought they needed zoning relief from Section 5.05 – Conversions, Section 5.09.2.d - Design Review, Section 5.20 – Floor Area Ratio, Section 5.43 – Waiver of Yard and Setback Requirements, Section 6.04.12 – Waiver of Off Street Parking Facilities, 6.01.2a – Waiver of Required Parking spaces and Section 8.02.2 – Alteration or Extension.

The Chair asked whether anyone wished to speak in favor or in opposition to the proposal. No one from the audience spoke in favor of the proposal. Although no one present spoke in opposition, the Chair did paraphrase a letter addressed to the Planning Board dated 20 December, 2007 from Mr. Raymond Wise, 14 Warwick Road, Brookline, MA, Town Meeting Member, Precinct 2. Mr. Wise, in opposition to the proposal, cited the potential loss of neighborhood integrity and character should this or similar relief be granted.

Adam Serafin, Planner, presented the findings from the Planning Board Report:

### Section 5.05 – Conversions

When converting a dwelling to create additional dwelling units in an M District, the Board of Appeals may by special permit waive any dimensional requirements except minimum lot size, provided no previously existing nonconformity to such requirements is increased and all other requirements of the By-law for conversions are met.

#### Section 5.09.2.d - Design Review

A <u>special permit</u> is required for any exterior alterations to multiple dwellings with 4 or more units on the premises, whether contained in one or more structures. All of the design standards in paragraph (d) have been met and comments on the most relevant follow:

- a. <u>Preservation of Trees and Landscape</u> The proposed addition will not result in the loss of trees or shrubs.
- b. <u>Relation of Buildings to Environment</u> Impacts on abutting properties should be minimal, as the existing building footprint will not be changing, and the proposed roof deck should have minimal impact.

Section 5.20 - Floor Area Ratio

		Allowed			
	By Right	By Special Permit	Existing	Proposed	Relief
F.A.R	1.5 (100%)	1.8 (120%)	1.2 (80%)	<b>1.56</b> (104%)	Special Permit*
Floor Area (s.f.)	6,144	7,373	4,940	6,400	-

<sup>\*</sup> Under Section 5.22.3.b.2 the Board may allow by <u>special permit</u> an interior/exterior addition up to 120% of the permitted gross floor area so long as the maximum allowed FAR of 120% has not been reached.

Section 5.50 - Front Yard Requirements

Section 5.51 – Projections into Front Yards

Section 5.60 – Side Yard Requirements

Section 5.90 – Minimum Landscaped Open Space

Section 5.91 – Minimum Usable Open Space

Section 5.91e-Minimum Usable Open Space

Section 6.01.2a – General Regulations Applying to Required Off0Street Parking Facilities

Section 6.02.1 – Table of Off-Street Parking Space Requirements

<b>Dimensional Requirements</b>	Required/Allowed	Existing	Proposed	Relief
Front Yard Setback	15 feet	11 feet	11 feet	Special Permit**
Side Yard Setback	13.8 feet	0 feet	0 feet	Special Permit **
Projection into Front Yards	4 feet	0 feet	0 feet	Special Permit **
Minimum Landscaped	10%	9.8%	9.8%	Special Permit***

Open Space				
Minimum Usable Open Space	15%	0%	7.5%	Special Permit***

<sup>\*\*</sup> Under Section 5.43, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. The applicants have stated counterbalancing amenities at this location will include new trash barrel holders and a sidewalk path.

Section 6.04.2.b – Design of All Off-Street Parking Facilities Section 6.04.2.f – Design of All Off-Street Parking Facilities Section 6.04.3 – Design of All Off-Street Parking Facilities Section 6.04.5.b – Design of All Off-Street Parking Facilities

Parking Requirements	Required/Allowed	Existing	Proposed	Relief
Standard Stall Depth	18 feet	31 feet	31 feet	Complies
Clear Backing Distance	20 feet	21 feet	21 feet	Complies
Parking Area Side Setback	5 feet	0 feet	0 feet	Special Permit§
Parking Spaces	8.6	4	4	Special Permit <sup>§§</sup>

<sup>&</sup>lt;sup>§</sup>Under **Section 6.04.12** the Board of Appeals may waive dimensional requirements for parking facilities to serve existing buildings.

#### Section 8.02.2 – Alteration or Extension

A special permit is required to alter or enlarge a pre-existing non-conforming structure.

Mr. Serafin said that the Planning Board was not opposed to this application to convert basement into a new residential dwelling unit, thereby converting a three-family residence into a four-family residence at 9 Strathmore Road. A number of other basement dwelling units have been created in the other brownstone apartment blocks on Strathmore Road, as well as nearby upper Beacon Street. The creation of the basement apartment unit will result in minimal alteration to the exterior of the building. While the applicant is only proposing one parking space per unit, the Board notes that this property is within close walking distance to stops for both the MBTA "C" and "D" lines, and will employ a parking layout similar to that of adjacent properties. Therefore, he said, the Planning Board recommended approval of

<sup>\*\*\*</sup>Under Section 5.05, when converting a dwelling to create additional dwelling units in an M District, the Board of Appeals may by special permit waive any dimensional requirements except minimum lot size, provided no previously existing nonconformity to such requirements is increased and all other requirements of the By-law for conversions are met.

Under Section 6.01.2.a, the Board of Appeals may waive up to one half of the required parking spaces when a structure is converted for one or more additional dwelling units. The structure would contain two (2) three-bedroom units, and two (2) two-bedroom unit, for a total of 8.6 required parking spaces ( $(2.3 \times 2) + (2.0 \times 2)$ ).

the plans titled "9 Strathmore Road", by Mark Jens Neilson of CYMA2, dated 08/28/07, subject to the following conditions:

- 1. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.
- 2. Prior to the issuance of a certificate of occupancy, the parking spaces at the rear of the building shall be striped or otherwise delineated.
- 3. Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan showing dimensions, including landscaping, and stamped and signed by a registered architect or land surveyor; 2) building elevations, including the proposed rear elevation, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chair called on Frank Hitchcock representing the Building Department. Mr. Hitchcock said that all the required relief could be granted by special permit. He said a special permit under Section 5.05 was required to waive dimensional requirements for conversions in the M District. A special permit is required under Section 5.09.2.d because of exterior alterations to a multiple dwelling with 4 or more units on the premises. Under Section 5.22.3.b.2 the Board may allow an interior/exterior addition up to 120% of the permitted gross floor area so long as the maximum allowed FAR of 120% has not been reached. Section 5.43 allows the Board to waive yard and setback requirements if a counterbalancing amenity is provided. The applicants have stated counterbalancing amenities at this location will include new trash barrel holders and a sidewalk path. A special permit under Section 6.04.12 allows the Board to waive dimensional requirements for parking facilities to serve existing buildings. Mr. Hitchcock stated that a special permit under Section 6.01.2.a, allows the Board to waive up to one half of the required parking spaces when a structure is converted for one or more additional dwelling units. The structure would contain two (2) three-bedroom units, and two (2) two-bedroom unit, for a total of 8.6 required parking spaces ( (2.3 x 2) + (2.0 x 2)). Mr. Hitchcock said that normally, 9 Strathmore Road would require nine parking spaces. The Board could waive up to one half, leaving five

spaces required. He said that traditionally, previous Boards have allowed tandem, unit-resident parking and this may be a way to satisfy the parking requirement for five spaces. Finally, a special permit under <a href="Section 8.02.2">Section 8.02.2</a> is required because the request is to enlarge a pre-existing, non-conforming structure.

Mr. Hitchcock stated that the Building Department had no objections to the proposal, the relief required or the conditions recommended by the Planning Board.

Members of the Board asked questions of the petitioner. Jesse Geller stated that he was concerned about the number of required spaces and how and if it could be resolved. Enid Starr stated that the tandem requirement for one of the four existing spaces could be an additional condition of a special permit. Mr. Geller raised a question about adequate light and air for the newly created unit and stated that although it was out of the Board's jurisdiction, he expected it would be looked-at carefully during the permitting process should relief be granted. He questioned how the petitioner intended to delineate the walkway along the Westerly boundary and Mr. Kenney responded that it would be clearly delineated by pavers or other material to assure parking does not infringe on the walkway. Mr. Geller also raised the issue of required parking spaces noting that his interpretation of the by-law was that it required five. Mr. Geller asked whether the roof deck would be available to all residents of the building and the petitioner responded that it would. Board member, Anna Christina Wolfe, said that she had visited the site and counted thirteen names on the mailboxes, implying that there were more than the allowed number of occupants in the building. The petitioner responded that there are currently only four residents per unit and that was all that would ever be allowed. The Chair stated that the number of occupants was an enforcement issue and not before the Board. Ms. Wolfe stated that there were two reports at the Police Department of loud noise/parties at the 9 Strathmore Road in the last year. She expressed her concern that the approval of this petition might contribute to the deterioration of the character of the neighborhood.

The Chair then asked Mr. Freeman if he wished to make a closing statement. He reiterated that the approval of this petition would have minimal impact on the neighborhood and that Mr. Kenney's desire to live in one of the units would assure the neighborhood that the residents of 9 Strathmore Road would be good neighbors. This representation by Mr. Freeman and Mr. Kenny satisfied Ms. Wolfe's concerns.

The Board deliberated on this matter, discussing at length the potential impact on the neighborhood and having considered the foregoing testimony, concludes that it is desirable to grant special permits under Section 5.05, Section 5.09.2.d, Section 5.22.3.b.2, Section 5.43, Section 6.04.12, Section 6.01.2.a and Section 8.02.2 of the Zoning By-law and makes the following findings pursuant to Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

After discussion, the Board agreed that the petitioner met the requirements for relief in the form of special permits and voted unanimously to grant all the requested relief with the following conditions:

- 1. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.
- 2. Prior to the issuance of a certificate of occupancy, five parking spaces at the rear of the building shall be striped or otherwise delineated, one of which shall be a tandem space serving one dwelling unit in the building
- 3. Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan showing dimensions, including landscaping, and stamped and signed by a registered architect or land surveyor; 2) building

elevations, including the proposed rear elevation, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

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Enid Starr

Filing Date: January 16, 2008

A True Copy:

ATTES/

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Partick J. Ward

Clerk, Board of Appeals

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